

§ 57D-4-05. Restrictions on making distributions.

(a) No distribution may be made by an LLC if, after giving effect to the distribution, either of the following would occur:

- (1) The LLC would not be able to pay its debts as they become due in the ordinary course of business.
- (2) The LLC's total liabilities would exceed the value of the LLC's assets.

(b) For purposes of subsection (a) of this section, the following apply:

- (1) An LLC may determine the value of its assets, the amount of its liabilities, and the time payments of its liabilities are to be made using accounting practices and principles that are reasonable under the circumstances.
- (2) The amount of a liability for which the creditor's recourse is limited to specific collateral will not exceed the value of the collateral.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured (i) in the case of any distribution of indebtedness as of the date the indebtedness is distributed and (ii) in all other cases, either as of the date the distribution is authorized if the distribution occurs within 120 days after the date authorization is made or as of the date the distribution is made if payment occurs more than 120 days after the date authorization is made.

(d) Except as provided in subsection (e) of this section, an LLC's indebtedness issued as a distribution made in accordance with this section is a liability of the LLC to be paid under the law applicable to debtors and creditors.

(e) An LLC's indebtedness issued as a distribution is not a liability of the LLC for purposes of subsection (a) of this section if its terms provide that payment of principal and interest are to be made only to the extent that at the time of such payment a distribution to interest owners could then be made under this section. Subsection (a) of this section applies to each payment of principal or interest made under any indebtedness described in the preceding sentence and not to the issuance of the indebtedness. (2013-157, s. 2.)